

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N :

ONTARIO SECURITIES COMMISSION

Applicant

- and -

GO-TO DEVELOPMENTS HOLDINGS INC., OSCAR FURTADO, FURTADO HOLDINGS INC., GO-TO DEVELOPMENTS ACQUISITIONS INC., GO-TO GLENDALE AVENUE INC., GO-TO GLENDALE AVENUE LP, GO-TO MAJOR MACKENZIE SOUTH BLOCK INC., GO-TO MAJOR MACKENZIE SOUTH BLOCK LP, GO-TO MAJOR MACKENZIE SOUTH BLOCK II INC., GO-TO MAJOR MACKENZIE SOUTH BLOCK II LP, GO-TO NIAGARA FALLS CHIPPAWA INC., GO-TO NIAGARA FALLS CHIPPAWA LP, GO-TO NIAGARA FALLS EAGLE VALLEY INC., GO-TO NIAGARA FALLS EAGLE VALLEY LP, GO-TO SPADINA ADELAIDE SQUARE INC., GO-TO SPADINA ADELAIDE SQUARE LP, GO-TO STONEY CREEK ELFRIDA INC., GO-TO STONEY CREEK ELFRIDA LP, GO-TO ST. CATHARINES BEARD INC., GO-TO ST. CATHARINES BEARD LP, GO-TO VAUGHAN ISLINGTON AVENUE INC., GO-TO VAUGHAN ISLINGTON AVENUE LP, AURORA ROAD LIMITED PARTNERSHIP and 2506039 ONTARIO LIMITED

Respondents

APPLICATION UNDER SECTIONS 126 AND 129 OF THE *SECURITIES ACT*, R.S.O. 1990, c. S.5, AS AMENDED

FACTUM OF THE RECEIVER – RETURNABLE NOVEMBER 23, 2022

November 21, 2022

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PART I – INTRODUCTION

1. This factum is filed by KSV Restructuring Inc. (“**KSV**”), in its capacity as the Court-appointed receiver and manager (in such capacity, the “**Receiver**”) of the 23 parties listed on Schedule “B” of the Receivership Order (as defined below) (the “**Receivership Respondents**”) in support of the Receiver’s motion for three Orders.
2. The first Order contains, in substance, the following requested relief (the “**Major Mackenzie AVO**”):
 - (a) approving the agreement of purchase and sale dated August 8, 2022 (the “**Major Mackenzie APS**”) between the Receiver and 2357616 Ontario Inc. (the “**Major Mackenzie Purchaser**”) for the purchase and sale of the real property municipally known as 185, 191, 197, 203, 209 and 215 Major Mackenzie Drive East, Richmond Hill, ON, and legally described in PINs 03139-0047, 03139-0048, 03139-0049, 03139-0050, 03139-0051 and 03139-0052 (collectively, the “**Major Mackenzie Real Property**”), and authorizing the Receiver to complete the transaction contemplated thereby (the “**Major Mackenzie Transaction**”);
 - (b) upon execution and delivery of a certificate by the Receiver containing confirmation of the closing of the Major Mackenzie Transaction, vesting in the Major Mackenzie Purchaser¹ all rights, title and interest in the Purchased Assets (as defined in the Major Mackenzie APS) subject to certain encumbrances; and

¹ Or, if applicable, one or more valid assignee(s) of the Major Mackenzie Purchaser pursuant to the terms and conditions of section 15.10 of the Major Mackenzie APS.

- (c) authorizing and directing the Receiver to make a distribution to Cameron Stephens Mortgage Capital Ltd. (“**Cameron Stephens**”) in respect of its mortgage registered on title to the Major Mackenzie Real Property.
- 3. The second Order contains, in substance, the following requested relief (the “**Glendale Tarion Holdback Order**”):
 - (a) approving the execution and implementation of the agreement amongst the Receiver, Tarion Warranty Corporation (“**Tarion**”) and Trisura Guarantee Insurance Company (“**Trisura**”) dated November 4, 2022 (the “**Glendale Tarion Holdback Agreement**”); and
 - (b) approving certain ancillary relief in connection therewith.
- 4. The third and final Order contains, in substance, the following requested relief (the “**Ancillary Order**”):
 - (a) subject to certain conditions, authorizing and directing the Receiver to make distributions to creditors and investors of Go-To Glendale, Go-To Chippawa and, potentially, Go-To Stoney Creek (as each term is defined in the Sixth Report, as defined below);
 - (b) authorizing and directing the Receiver to release a unit purchaser deposit in respect of Go-To Eagle Valley (as defined in the Sixth Report) to Raymond Walker, without liability to Kathy Hogeveen;
 - (c) approving the Receiver’s Sixth Report to Court dated November 14, 2022 (the “**Sixth Report**”) and the actions and activities of the Receiver and its counsel described therein; and

- (d) approving the fees and disbursement of the Receiver from July 1, 2022 to and including September 30, 2022, and those of its counsel from July 1, 2022 to and including October 31, 2022.

PART II – THE FACTS

A. Background

5. Pursuant to an application by the Ontario Securities Commission (the “**OSC**”) under ss. 126 and 129 of the *Securities Act*, RSO 1990, c. S.5, as amended (the “**Securities Act**”), the Court made an Order on December 10, 2021 (the “**Receivership Order**”) appointing KSV as the Receiver of the 17 pieces of real property listed on Schedule “A” of the Receivership Order (the “**Real Property**”) and all the other assets, undertakings and properties of each of the Receivership Respondents, including all the assets held in trust or required to be held in trust by or for any of the Receivership Respondents, or by their lawyers, agents and/or any other person, and all proceeds thereof (together with the Real Property, the “**Property**”).²
6. The Receivership Respondents were developers of nine, early-stage residential real estate projects in Ontario (the “**Projects**”).³ The Receivership Respondents’ principal is Oscar Furtado (“**Mr. Furtado**”).

² Receivership Order, at recitals and para. 3.

³ Sixth Report, section 2.0.

7. Between 2016 and 2020, Mr. Furtado and the Receivership Respondents raised almost \$80 million from Ontario investors for the Projects, the vast majority of which funds remained outstanding at the outset of this proceeding.⁴
8. Having regard to all the circumstances described in the OSC's application, the Court determined that it was in the best interests of the Projects' investors to appoint the Receiver.⁵
9. Mr. Furtado and the Receivership Respondents took steps to appeal the Receivership Order (the "**Appeal**"). They also brought a motion to stay the Receivership Order pending the Appeal (the "**Stay Motion**").⁶ The Court of Appeal for Ontario dismissed both the Appeal and the Stay Motion.⁷
10. On June 27, 2022, Mr. Furtado and the Receivership Respondents filed an application with the Supreme Court of Canada ("**SCC**"), seeking leave to appeal the Appeal's dismissal.⁸ As of the date of this factum, no decision has been released by the SCC.⁹

B. The Sale Process and Its Results

11. The Receivership Order grants the Receiver the authority to, *inter alia*, market the Property, sell the Property (with Court approval) and apply for vesting Orders.¹⁰

⁴ Endorsement of The Honourable Mr. Justice Pattillo dated December 10, 2021 [**Receivership Endorsement**], at para. 8.

⁵ Receivership Endorsement, at para. 22.

⁶ Sixth Report, section 1.0.

⁷ Sixth Report, section 1.0.

⁸ Sixth Report, section 1.0.

⁹ Sixth Report, section 1.0.

12. The Receiver also obtained a further Order from the Court on February 9, 2022 (the “**Sale Process Order**”), which, in substance, approved a sale process for the Property (the “**Sale Process**”).¹¹ As part of the Sale Process, the Receiver retained:
- (a) Colliers Macaulay Nicolls Inc. to market the Property of Go-To Spadina Adelaide Square Inc. and Go-To Spadina Adelaide Square LP (jointly, “**Go-To Adelaide**”); and
 - (b) CBRE Limited (“**CBRE**”) to market the balance of the Property.¹² CBRE also engaged Internet Commercial Realty Inc., a broker based near Niagara Falls, to assist with its marketing efforts for the Property located in Southwestern Ontario.¹³
13. To date, the Court has granted Orders: (i) approving the sale and vesting of six of the nine groups of Property, all of which transactions have subsequently closed (the “**Completed Transactions**”); (ii) authorizing and directing the Receiver to distribute monies to certain mortgagees who were registered on title prior to the closing of the Completed Transactions; and (iii) approving the previous reports of the Receiver and the actions and activities of the Receiver and its counsel.¹⁴

¹⁰ Receivership Order, at paras. 4(j), 4(k) and 4(l).

¹¹ Sixth Report, section 4.0.

¹² Sixth Report, section 4.0.

¹³ Sixth Report, section 4.0.

¹⁴ Sixth Report, section 1.0.

(i) *The Completed Transactions and Associated Secured Creditor Distributions*¹⁵

14. The St. Catharines Transaction closed on May 9, 2022 for total proceeds of \$7.25 million. Court-approved distributions were made shortly thereafter to the first two mortgagees on title, Meridian Credit Union Limited and Reciprocal Opportunities Incorporated, in the respective approximate amounts of \$1.193 and \$2.396 million.
15. The Eagle Valley Transaction closed on June 30, 2022. The purchase price was \$5.85 million. The Court subsequently approved a construction lien holdback of approximately \$916,000, representing the maximum aggregate amount of construction liens that could possibly rank in priority to the second registered mortgagee on title, Gabriele Fischer and Imperio SA Holdings Inc. (together, “**Imperio**”). Court-approved distributions were then made to the first two mortgagees on title, Queen Properties and Imperio, in the respective amounts of approximately \$2.967 million and \$1 million.¹⁶
16. The Beard Transaction closed on July 4, 2022. The purchase price was \$2.45 million. Court-approved distributions have been made to the mortgagees on title, Prudential Property Management Inc. and Imperio, in the respective approximate amounts of \$830,000 and \$1.139 million.¹⁷

¹⁵ Unless otherwise stated, all references in this section are to, and all capitalized terms in this section are defined in, section 5.0 of the Sixth Report.

¹⁶ The mortgage in favour of Imperio was registered on title to both the Eagle Valley Real Property and the Beard Real Property. The secured indebtedness owing to Imperio was approximately \$3.4 million prior to the partial distributions from the Eagle Valley Transaction (\$1 million) and the Beard Transaction (\$1.139 million), such that secured indebtedness remains outstanding under the mortgage.

¹⁷ The mortgage in favour of Imperio was registered on title to both the Eagle Valley Real Property and the Beard Real Property. The secured indebtedness owing to Imperio was approximately \$3.4 million prior to the partial distributions from the Eagle Valley Transaction (\$1 million) and the Beard Transaction (\$1.139 million), , such that secured indebtedness remains outstanding under the mortgage.

17. The Adelaide Transaction closed on July 7, 2022. The purchase price was \$90 million, plus a potential density bonus of \$3 million. Court-approved distributions were made shortly thereafter to the first two mortgagees on title, Cameron Stephens and Northridge Maroak Developments Inc., in the respective approximate amounts of \$55.6 million and \$18.0 million.
18. The Chippawa Transaction closed on July 27, 2022. The purchase price was \$4.25 million. A Court-approved distribution was made shortly thereafter to the mortgagee on title, Green Leaf Financial Limited, in the approximate amount of \$2.1 million.
19. The Stoney Creek Transaction closed on September 21, 2022. The purchaser price was \$15.4 million. Court-approved distributions were made shortly thereafter to the mortgagees on title, Podesta Group Inc./L M I Management Inc. and 2106622 Ontario Ltd./Vlasta Bukovsky, in the respective approximate amounts of \$9.63 million and \$2.02 million.

*(ii) The Proposed Major Mackenzie Transaction*¹⁸

20. The Major Mackenzie Real Property, which is comprised of six vacant single detached houses with a total of 330 feet of frontage on Major Mackenzie Drive in Richmond Hill, Ontario, was marketed for sale in accordance with the Court-approved Sale Process, as described in more detail in section 7.3 of the Fifth Report.¹⁹

¹⁸ Unless otherwise stated, all references in this section are to, and all capitalized terms in this section are defined in, section 6.0 of the Sixth Report.

¹⁹ Receiver's Fifth Report to Court dated August 12, 2022 (the "**Fifth Report**").

21. As referenced in the Fifth Report, an entity related to the Goh Parties submitted the Major Mackenzie APS, which was accepted by the Receiver as the Stalking Horse Bid, subject to completing a stalking horse sale process (the “**Stalking Horse Sale Process**”). On August 22, 2022, the Court approved the Stalking Horse Sale Process (inclusive of the Major Mackenzie APS as the Stalking Horse Bid, and the associated Bidding Procedures and Expense Reimbursement).
22. The Bidding Procedures provided that Qualified Bidders were to submit, by no later than 5 p.m. on September 30, 2022 (the “**Bid Deadline**”), an agreement of purchase and sale with a purchase price equal to or greater than: (i) the Purchase Price of the Major Mackenzie APS; plus (ii) the Expense Reimbursement; (iii) CBRE’s fee as described in the Fifth Report; and (iv) a \$100,000 bid increment. Qualified Bidders were also required to pay a deposit of \$500,000.
23. The Bidding Procedures also provided that, in the absence of any other Qualified Bids being submitted by the Bid Deadline (other than the Major Mackenzie APS as the Stalking Horse Bid), the Stalking Horse Bid is deemed to be the Successful Bidder.
24. On the Receiver’s instruction following the Court’s approval of the Staking Horse Sale Process on August 22, 2022, CBRE contacted all parties who had previously expressed an interest in the Major Mackenzie Real Property. CBRE summarized the terms of the Major Mackenzie APS and the Bidding Procedures and invited interested parties to reconsider the opportunity. CBRE also included a copy of the Major Mackenzie APS in the data room that it prepared.

25. In addition, the Receiver advised certain investors in Go-To Major Mackenzie of the Stalking Horse Sale Process, the Stalking Horse Bid and the Bidding Procedures. The Receiver encouraged those investors to refer any interested parties to CBRE.
26. Notwithstanding CBRE's further marketing efforts and the Receiver's communications with investors, no bids were submitted by the Bid Deadline. Accordingly, and pursuant to the Bidding Procedures, the Stalking Horse Bid is deemed to be the Successful Bid.
27. The Major Mackenzie APS was previously summarized in the Fifth Report and the Receiver's corresponding factum in support thereof. For convenience, the Major Mackenzie APS is also summarized below:
- (a) Purchaser: 2357616 Ontario Inc., which is arm's length to the Receivership Respondents.
 - (b) Purchased Assets: All of the Receiver's and Go-To Major Mackenzie's right, title and interest in the Major Mackenzie Real Property and certain permits specified in the Major Mackenzie APS.
 - (c) Purchase Price: The greater of: (i) \$9.5 million; and (ii) the amount required to satisfy the Priority Payables²⁰ plus the amounts required to satisfy the two registered mortgages on title.²¹ The First Mortgage Indebtedness shall be assumed by, or otherwise satisfied by, the Purchaser, and the Second Mortgage Indebtedness shall be credit bid by the Purchaser.
 - (d) Deposit: The Major Mackenzie Purchaser paid a \$500,000 deposit.
 - (e) Closing Date: The latest of: (i) the first Business Day following the date that is

²⁰ Represents all amounts owing (including all amounts accrued but not yet payable) by the Specified Receivership Respondents as of the Closing Date which rank *pari passu* or in priority to the First Mortgage Indebtedness, including, without limitation: (i) the amounts secured by, or to be secured by, the Receivership Charge and which are allocable to the Specified Real Property.

²¹ The First Mortgage Indebtedness is owed to Cameron Stephens, which is estimated to be approximately \$7.077 million as of November 25, 2022. The Second Mortgage Indebtedness is owed to the Goh Parties, which is estimated to be approximately \$1.9 million as of November 25, 2022. The First Mortgage Indebtedness is expected to be repaid in full by the Purchaser as part of the Purchase Price on closing.

ten days following the granting of the Approval and Vesting Order; (ii) the first Business Day following the date on which any appeals or motions to set aside or vary the Approval and Vesting Order have been finally determined; and (iii) November 25, 2022, or, such other date as the Receiver and the Major Mackenzie Purchaser agree in writing.

(f) Material Conditions:

- (i) there shall be no Claim, litigation or proceedings pending or threatened or order issued by a Governmental Authority against either of the Parties, or involving any of the Purchased Assets, for the purpose of enjoining, preventing or restraining the completion of the Transaction or otherwise claiming that such completion is improper; and
- (i) the Court shall have issued the Approval and Vesting Order by no later than November 30, 2022.

(g) Acceptance of Successful Bid: The sale of the Purchased Assets by the Receiver is conditional upon Court approval.

28. The Major Mackenzie APS provides the ability for the Purchaser to assign its interest therein (and direct that title to the Purchased Assets be taken by an assignee), subject to entering into an acceptable assumption agreement prior to the granting of the proposed Major Mackenzie AVO.²² The Receiver will update the Court at the hearing if the Purchaser has elected this option by entering into such an agreement.

29. As previously identified in the Fifth Report, as the Stalking Horse Bid is the Successful Bid, there is not anticipated to be any recoveries for Go-To Major Mackenzie's: (i) sole construction lien claimant, Capital Build Construction Management Corp. ("**Capital Build**"),²³ which guaranteed and postponed to the mortgages registered on title, or (ii) unsecured creditors or investors.

²² Section 15.10 of the Major Mackenzie AVO, which is appended as Appendix "J" to the Sixth Report.

²³ As described in section 8.1 of the Sixth Report, Capital Build was recently deemed to have made an assignment in bankruptcy on October 4, 2022, which the Receiver learned about on October 13, 2022. Goldhar & Associates Ltd. is Capital Build's Licensed Insolvency Trustee.

C. Proposed Distributions and the Glendale Tarion Holdback Agreement

30. On April 7, 2022, the Court approved a claims procedure (the “**Claims Procedure**”), pursuant to which the Receiver is authorized, directed and empowered to administer the Claims Procedure for the purpose of calling for, assessing and determining claims against the Receivership Respondents.²⁴
31. The Claims Bar Date (as defined in the Claims Procedure) was June 2, 2022 at 5 p.m. A summary of all the claims filed against the Receivership Respondents pursuant to the Claims Procedure is provided as Appendix “C” to the Sixth Report.²⁵
32. The Receiver has previously advised that it intends to recommend distributions to unsecured creditors and investors on an entity-by-entity basis, i.e., distributions will be recommended as the Claims Procedure is completed for a specific entity, assuming no other issues prevent the Receiver from recommending distributions at that time.²⁶
33. Having already made Court-approved distributions to certain mortgagees that were registered on title immediately prior to the closing of the six Completed Transactions, the Receiver is now prepared to recommend distributions to:
- (a) Cameron Stephens, in its capacity as the first-registered mortgagee on title to the Major Mackenzie Real Property (assuming that the proposed Major Mackenzie Transaction is approved by the Court and closes); and

²⁴ Sixth Report, sections 1.0 and 3.0.

²⁵ Sixth Report, section 3.0.

²⁶ Sixth Report, section 3.0.

- (b) the unsecured creditors and investors of Go-To Glendale, Go To Chippawa and, potentially, Go-To Stoney Creek (subject to the conditions discussed in the Sixth Report and summarized below).

(i) ***Proposed Distribution re Go-To Major Mackenzie***

- 34. The proposed distribution to Cameron Stephens from the sale proceeds of the Major Mackenzie Transaction would be in full satisfaction of its secured claims against Go-To Major Mackenzie (approximately \$7.077 million as of November 25, 2022).²⁷
- 35. The Receiver's independent legal counsel, Aird & Berlis LLP, has provided opinions to the Receiver, which, subject to the standard assumptions and qualifications contained therein, conclude that the real property security granted by Go-To Major Mackenzie to Cameron Stephens and the Goh Parties is valid and enforceable.²⁸
- 36. As discussed in the Sixth Report, the Receiver is not aware of any other secured creditors or other claims that rank, or may rank, in priority to Cameron Stephens, other than: (i) property taxes and CBRE's commission (which will be satisfied on closing of the Major Mackenzie Transaction); and (ii) the Receiver's Charge (in respect of which the Receiver will retain a reserve for its present and future fees and expenses and those of its counsel).²⁹

²⁷ Sixth Report, section 6.0.

²⁸ Sixth Report, section 6.0. The security opinion with respect to the Goh Parties was obtained given the "credit bid" nature of the Major Mackenzie APS.

²⁹ Sixth Report, section 6.0.

(ii) *Proposed Distributions re Go-To Glendale and the Glendale Tarion Holdback Agreement*

37. Based on Go-To Glendale's books and records, the results of the Claims Procedure and the sale proceeds from the St. Catharines Transaction, the Receiver previously advised that there would be sufficient funds to: (i) pay in full all valid unsecured creditor claims against Go-To Glendale once the claims filed by Trisura and Tarion are resolved; and (ii) return in full the capital invested by Go-To Glendale's investors.³⁰
38. Subject to the Court's approval of the Glendale Tarion Holdback Agreement, the Receiver will have resolved the claims filed by Trisura and Tarion against Go-To Glendale. In substance, the Glendale Tarion Holdback Agreement provides for:
- (a) the cancellation of the bond provided by Trisura (which insured Tarion's obligations with respect to the Go-To Glendale condominium Project and which held a corresponding secured charge on title);
 - (b) the reduction of Tarion's claim in the Claims Procedure from \$34.2 million to \$56,500, and the provision of \$80,000 to Tarion of cash collateral (to be called upon in the event of a claim made against Tarion under the *Ontario New Home Warranties Plan Act* and/or its regulations³¹); and
 - (c) the withdrawal of Trisura's \$3.3 million claim in the Claims Procedure, and the payment of certain expenses incurred by Trisura totalling \$31,456.

³⁰ Sixth Report, section 5.1.

³¹ As noted in the Sixth Report, the Receiver has completed the return of condominium unit purchaser deposits as contemplated by the deposit return protocol previously agreed amongst the Receiver, Trisura and Tarion.

39. As noted in the Sixth Report, the Receiver does not intend to distribute any monies at this time (and will hold back sufficient funds) to address the claim filed by Oscar Furtado (approximately \$116,000), the unresolved portion of the claim filed by Capital Build (approximately \$250,000)³² and the potential intercompany claims identified by the Receiver in the Sixth Report (approximately \$40,000).³³ The Receiver will also maintain sufficient reserves for its ongoing professional fees and disbursements, those of its counsel and ongoing future receivership expenses.³⁴

(iii) Proposed Distributions re Go-To Chippawa

40. As noted in the Fifth Report and reproduced in the Sixth Report, there are sufficient proceeds from the Chippawa Transaction to pay all valid creditor claims against Go-To Chippawa.³⁵ There are also sufficient proceeds to make an interim distribution to investors, estimated in the Sixth Report to be approximately 30% of their invested capital.³⁶
41. The Receiver does not intend to distribute any monies at this time (and will hold back sufficient funds) to address the claim filed by Oscar Furtado (approximately \$34,000), the claim filed by Capital Build (approximately \$324,000)³⁷ and the potential intercompany claims identified by the Receiver in the Sixth Report (approximately

³² As noted in the Sixth Report, the Receiver disallowed the totality of the claim filed by Capital Build, and only part of the Receiver's disallowance has been disputed.

³³ Sixth Report, section 5.1.

³⁴ Sixth Report, section 5.1.

³⁵ Sixth Report, section 5.5.

³⁶ Sixth Report, section 5.5.

³⁷ As noted in the Sixth Report, the Receiver disallowed the totality of the claim filed by Capital Build. This disallowance has since been disputed.

\$163,000).³⁸ The Receiver will also maintain sufficient reserves for its ongoing professional fees and disbursements, those of its counsel and ongoing future receivership expenses.³⁹

(iv) Proposed Distributions re Go-To Stoney Creek

42. As noted in the Sixth Report, FAAN Mortgage Administrators Inc., in its capacity as the Court-appointed trustee of Building & Development Mortgages Canada Inc. (in such capacity, the “**FAAN Trustee**”), filed a secured claim in the Claims Procedure against both Go-To Adelaide and Go-To Stoney Creek in the principal amount of \$5.2 million (the “**FAAN Claim**”), which the Receiver disallowed in its entirety.⁴⁰ Subsequent to the issuance of the Sixth Report, the FAAN Trustee disputed the Receiver’s disallowance.
43. As noted in the Sixth Report, if the FAAN Trustee’s dispute applies to and is ultimately successful against Go-To Stoney Creek, it is not anticipated that there would be any funds available to distribute to unsecured creditors or investors of Go-To Stoney Creek.⁴¹ If the FAAN Trustee’s dispute does not apply to Go-To Stoney Creek, or is not ultimately successful against Go-To Stoney Creek, the Receiver may be in a position to make a distribution to Go-To Stoney Creek’s unsecured creditors, and, possibly, investors.⁴²

³⁸ Sixth Report, section 5.5.

³⁹ Sixth Report, section 5.5.

⁴⁰ Sixth Report, sections 5.4 and 5.6.

⁴¹ Sixth Report, section 5.6.

⁴² Sixth Report, section 5.6.

44. The Receiver does not intend to distribute any monies to unsecured creditors or investors of Go-To Stoney Creek until such time as there is clarity regarding the FAAN Trustee's dispute. Any eventual distribution (if any) would also be subject to the Receiver holding back sufficient funds to address the claim filed by Oscar Furtado (approximately \$868,000), the potential intercompany claims identified by the Receiver in the Sixth Report (approximately \$114,000) and sufficient reserves for the Receiver's ongoing professional fees and disbursements, those of its counsel and ongoing future receivership expenses.⁴³

D. Proposed Unit Purchaser Deposit Return to Mr. Walker and Associated Relief⁴⁴

45. As in the case of Go-To Glendale, the Receiver entered into a protocol with Trisura and Tarion so it could return to Go-To Eagle Valley unit purchasers the deposits they paid to purchase units in the Go-To Eagle Valley project. The Receiver has returned deposits to the purchasers of 93 of the 94 condominium units.
46. There is one unreturned deposit because:
- (a) the Receiver understands that the original unit purchaser (Kathy Hogeveen) transferred her interest in the condominium unit to another individual (Raymond Walker) and received from Mr. Walker a full reimbursement of the deposit of \$72,450; but
 - (b) prior to the issuance of the within motion, Ms. Hogeveen had refused to confirm that she has no interest in this remaining deposit held by the Receiver.

⁴³ Sixth Report, section 5.6.

47. In her communications with the Receiver, Ms. Hogeveen confirms that she cashed the \$72,450 cheque from Mr. Walker but then forwarded a portion of the proceeds to another person (which the Receiver does not believe is relevant). The Receiver asks that it be authorized and directed by the Court to release this last remaining deposit to Mr. Walker, without the Receiver having any liability to Ms. Hogeveen (who has been served with the motion, and now appears prepared not to object to the deposit's release).

E. Professional Fees

48. The Receiver is seeking approval of its fees and disbursements for the period of July 1, 2022 to September 30, 2022, and those of its counsel for the period of July 1, 2022 to October 31, 2022. Fee affidavits and accompanying invoices in support of this relief are attached to the Sixth Report. As noted therein, professional time has been recorded, wherever possible, on an entity-by-entity basis.⁴⁵

F. Miscellaneous Go-Forward Matters

- (i) *Louis Raffaghello, Concorde Law Professional Corporation (“Concorde Law”) and Montana Management Inc. (“Montana”)*⁴⁶

49. The Receiver understands that Mr. Raffaghello of Concorde Law acted as counsel for Adelaide Square Developments (“**ASD**”) in the transactions that led to Go-To Adelaide acquiring the Adelaide Real Property. ASD has filed a secured claim in the Claims Procedure against Go-To Adelaide in the registered principal amount of \$19.8 million.

⁴⁴ All references in this section are to section 5.2 of the Sixth Report.

⁴⁵ Sixth Report, section 12.0.

⁴⁶ All references in this section are to section 5.4.1 of the Sixth Report.

50. As part of the Receiver's diligence associated with Go-To Adelaide and its historical transactions, the Receiver reviewed a direction regarding the disbursement of funds, issued on or about April 3, 2019, in connection with Go-To Adelaide's purchase of a portion of the Adelaide Real Property (the "**Direction**"). Pursuant to the Direction, Go-To Adelaide and its counsel were irrevocably authorized and directed to pay to Concorde Law, in trust, a \$20,950,000 assignment fee that was purportedly owing to ASD (the "**Purported Assignment Fee**").
51. The Receiver understands that an entity in which Mr. Raffaghello is the sole director and officer, Montana, was one of the ultimate beneficiaries of the Purported Assignment Fee.
52. On October 12, 2022, the Receiver's counsel wrote to Mr. Raffaghello at Concorde Law and Montana (the "**October 12th Letter**"), and required that he deliver to the Receiver, by October 21, 2022, all accounting and other non-privileged Records (as defined in the Receivership Order) evidencing who ultimately received the monies paid to Concorde Law in trust.
53. No response has been received to the October 12th Letter. The Receiver believes that the requested Records are critical to its assessment of the events which gave rise to the Purported Assignment Fee and may assist the Receiver to assess whether Go-To Adelaide has any claims against any of the ultimate beneficiaries of the Purported Assignment Fee. The requested Records may also be of assistance when determining the \$19.8 million secured claim filed by ASD against Go-To Adelaide in the Claims Procedure.

54. The Receiver notes that this is not the first time that Mr. Raffaghello has delayed providing and/or has withheld, as applicable, Records from the Receiver, as follows:

- (a) on June 21, 2022, the Receiver's counsel wrote to Mr. Raffaghello, requiring that he provide certain non-privileged Records in respect of Go-To Eagle Valley and Go-To Chippawa in respect of the Flip Transactions (as defined below). The letter specifically referenced the obligation in the Receivership Order of all Persons (as defined therein) to provide all non-privileged Records to the Receiver on request;
- (b) on June 28, 2022, Mr. Raffaghello advised that he had trust ledger statements in his files, which he would send to the Receiver's counsel "*tomorrow*;"
- (c) on June 29, 2022, Mr. Raffaghello changed his position, and advised that he had "*been instructed at this time not to release any information [regarding the Flip Transactions]. As you know, the privilege is not mine but my client's so for the time being I have to comply with his instructions. I suggest that you obtain directions from the court to compel my firm to release the documents to you if you require them. I will take no position in the matter and will comply with any court order*;"
- (d) on July 5, 2022, the Receiver's counsel sent a follow-up letter to Mr. Raffaghello, which again set out the obligation in the Receivership Order to provide the requested information. Amongst other things, the letter reiterated that only non-privileged Records were being sought, that he had provided no basis to justify the accounting Records as privileged and that accounting Records are not privileged by definition;

- (e) on August 11, 2022, with no response received from Mr. Raffaghello, the Receiver served its Fifth Report in which it sought an Order compelling the productions from Mr. Raffaghello by no later than August 29, 2022; and
- (f) the relief was granted by the Court on August 22, 2022, and Mr. Raffaghello finally provided the productions to the Receiver at 5:12 p.m. on August 29, 2022.

55. Given that Mr. Raffaghello has been advised multiple times of his obligation to provide non-privileged Records to the Receiver but continues to ignore the Receiver's most recent production request set out in the October 12th Letter, and given the Receiver's understanding that Montana was one of the ultimate beneficiaries of the Purported Assignment Fee paid in trust to Concorde Law, the Receiver is only prepared to provide Mr. Raffaghello, Concorde Law and Montana with one further opportunity to comply with their existing production obligations under the Receivership Order. If they fail to do so by 5 p.m. on November 30, 2022, the Receiver intends to bring a contempt motion against them and seek costs against them.

(ii) ***The Flip Transactions***⁴⁷

56. As previously reported, the Receiver has identified two additional transaction groups of concern (collectively, the "**Flip Transactions**"), as follows:

- (a) on April 21, 2017, 2557815 Ontario Inc ("**255**") purchased real property for \$1.2 million. Later that same day, 255 transferred this real property to Go-To Chippawa for \$3 million, being a difference of \$1.8 million; and

⁴⁷ All references in this section are to section 8.0 of the Sixth Report.

- (b) on June 22, 2017, 255 purchased real property for \$3.7 million. Later that same day, 255 transferred this real property to Go-To Eagle Valley for a purchase price of \$5.1 million, being a difference of \$1.4 million.

57. As a result of Concorde Law having provided the Receiver with the first round of Records discussed above, the Receiver has been able to identify the principal beneficiaries of the Flip Transactions. Information in this regard appears in sections 8.0, 8.1 and 8.2 of the Sixth Report. As noted therein, the Receiver is considering its next steps regarding the Flip Transactions.

*(iii) Insurance*⁴⁸

58. The Sixth Report discusses certain insurance-related matters, and, in particular:

- (a) the position of Lloyd's Underwriters ("**Lloyd's**") that Mr. Furtado allegedly made misrepresentations and incomplete disclosure when he renewed the Receivership Respondent's primary investment management insurance policy in or around November 2021 (the "**Investment Management Policy**"); and
- (b) a potential motion by Lloyd's to lift the stay of proceedings to permit it to rescind the Investment Management Policy as against the Receivership Respondents.

59. Lloyd's first became aware of the receivership proceeding (and Mr. Furtado's alleged misrepresentations and incomplete disclosure) in January 2022. Lloyd's waited until August 2022 to raise this matter with the Receiver and request a lifting of the stay. The Receiver responded in August 2022. Lloyd's did not reply until late October 2022.

⁴⁸ All references in this section are to section 10.0 of the Sixth Report.

60. The Investment Management Policy expired on November 9, 2022, provided an insurance limit of \$10 million and is also subject to an excess policy (together with the Investment Management Policy, the “**Policies**”) with a limit of \$5 million.
61. Prior to Policies’ expiring, the Receiver delivered copies of all the claims made under the Claims Procedure to Lloyd’s, its counsel, the excess insurer and its claims agent, thereby preserving any rights that creditors and investors may have under the Policies.
62. The Receiver’s counsel has suggested to Lloyd’s counsel that Lloyd’s not pursue its lift stay motion at this time, without prejudice to:
 - (a) such motion being brought on full notice to all impacted stakeholders once it is clear later in this receivership proceeding (i.e., after monetization of all the Real Property and determination of which claims remain unpaid) which stakeholders may have an economic interest in the Policies and in what amounts; and
 - (b) Lloyd’s advancing at such a motion whatever arguments it could have raised had the motion been scheduled now.
63. The Receiver believes that the approach would be beneficial to all the stakeholders, including the insurers, by preserving the substantive rights of all stakeholders until such time as the scope of the issues has been narrowed and become more certain. As notice of all claims have already been provided to the insurers, and as the Policies have now expired in the ordinary course, the Receiver sees no urgency or practical benefit in having the lift stay motion scheduled at this time (and, indeed, is of the view that scheduling the motion now would lead to further confusion amongst the stakeholders).

64. If the Court is inclined to schedule Lloyd's motion as part of the November 23, 2022 attendance, the Receiver's counsel has communicated to Lloyd's counsel the importance that any such motion be scheduled on full notice to all impacted stakeholders, who should be given a meaningful opportunity to respond.

PART III – ISSUES AND THE LAW

65. The substantive issues on the Receiver's motion are the granting of the Major Mackenzie AVO, the Glendale Tarion Holdback Order and the Ancillary Order, inclusive of the proposed relief regarding distributions⁴⁹ and the approval of the professional fees, disbursements and activities.

PART IV – LAW AND ARGUMENT

66. In determining whether to approve a proposed sale of assets by a Court-appointed receiver, Ontario courts have consistently and uniformly applied the principles set out by the Court of Appeal for Ontario in *Royal Bank v. Soundair*,⁵⁰ namely:
- (a) *whether the receiver has made a sufficient effort to get the best price and has not acted improvidently;*
 - (b) *whether the interests of all parties have been considered;*
 - (c) *the efficacy and integrity of the process by which offers are obtained; and*
 - (d) *whether there has been unfairness in the working out of the process.*

⁴⁹ Including the return of the one remaining unit purchaser deposit addressed earlier in this factum in respect of Go-To Eagle Valley.

⁵⁰ (1991), 4 O.R. (3d) 1 (C.A.) (CanLII: <http://canlii.ca/t/1p78p>) [*Soundair*].

67. The Receiver submits that the applicable *Soundair* principles have been satisfied in respect of the proposed Major Mackenzie Transaction and related relief. The “facts” section of this factum, together with the analysis in the Fifth Report, the Sixth Report and the appendices thereto, reflect the significant effort undertaken by the Receiver to obtain the best price possible, and to act fairly, efficiently and with integrity in considering the interests of all stakeholders, including, without limitation:

- (a) the sale process undertaken by the Receiver that led to the Major Mackenzie Transaction was commercially reasonable, and was conducted in accordance with both the Court-approved Sale Process and Stalking Horse Sale Process;
- (b) CBRE has extensive experience selling development properties in and around the GTA, widely canvassed the market for prospective purchasers and is of the view that the Major Mackenzie Transaction is the best available in the circumstances;
- (c) the Receiver engaged with several bidders before accepting the Major Mackenzie APS; however, none of them was able to provide evidence of financing to complete a transaction or funds to pay the required deposit;
- (d) several parties previously submitted unconditional offers and each of them failed to carry-through with these supposedly unconditional offers;
- (e) the Major Mackenzie Real Property was first marketed without a listing price, then with a listing price and then again in the Stalking Horse Sale Process. Despite these different marketing approaches, no acceptable offer (other than the Stalking Horse Bid) was submitted;
- (f) the Stalking Horse Sale Process provided the Receiver an opportunity to continue to market the property to determine if a superior transaction could be

completed, and the Receiver does not believe that further time spent marketing the property would result in a superior transaction; and

- (g) the Major Mackenzie Purchaser paid a deposit of \$500,000, the transaction is unconditional (except for Court approval) and it will satisfy all outstanding mortgage indebtedness on the Major Mackenzie Real Property.⁵¹

68. The Receiver's rationale for its acceptance of the Major Mackenzie Transaction and proposed distributions and related relief discussed in the Sixth Report and summarized in this factum reflects sound business judgment (as does the proposed Glendale Tarion Holdback Order, which, if granted, will make the proposed distributions in respect of Go-To Glendale possible). As such, the requested relief falls within "*the general principle that the court will be loathe to interfere with the business judgment of a Receiver and refuse to approve a transaction recommended by the Receiver acting properly in the fulfillment of its obligations as an officer of the court.*"⁵²

69. The fees, disbursements and activities of the Receiver and its counsel are fair, appropriate and reasonable. They reflect the proper and diligent execution of the Receiver's duties, and should be approved by this Court.⁵³

ALL OF WHICH IS RESPECTFULLY SUBMITTED as of the date first written above.

Aird & Berlis LLP

AIRD & BERLIS LLP, lawyers for the Receiver

⁵¹ Sixth Report, section 6.4.

⁵² *Soundair*, at para. 16; *Morganite Canada Corp. v. Wolfhollow Properties Inc.* (2003), 47 CBR (4th) 89 (ONSC) (CanLII: <http://canlii.ca/t/4qkp>) at para. 7; *B&M Handelman Investments Limited v. Drotos*, 2018 ONCA 581 (CanLII: <http://canlii.ca/t/hsp9r>) at para. 43.

⁵³ Paragraphs 21 and 22 of the Receivership Order provide, amongst other things, that the Receiver and its counsel shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts.

**SCHEDULE “A”
LIST OF AUTHORITIES**

1. *Royal Bank of Canada v. Soundair Corp.*, (1991) 4 O.R. (3d) 1 (C.A.).
2. *Morganite Canada Corp. v. Wolfhollow Properties Inc.*, (2003) 47 CBR (4th) 89 (ONSC).
3. *B&M Handelman Investments Limited v. Drotos*, 2018 ONCA 581.

SCHEDULE “B” RELEVANT STATUTES

Securities Act, R.S.O. 1990, c. S.5

Freeze direction

126 (1) If the Commission considers it expedient for the due administration of Ontario securities law or the regulation of the capital markets in Ontario or expedient to assist in the due administration of the securities laws or the regulation of the capital markets in another jurisdiction, the Commission may,

- (a) direct a person or company having on deposit or under its control or for safekeeping any funds, securities or property of any person or company to retain those funds, securities or property;
- (b) direct a person or company to refrain from withdrawing any funds, securities or property from another person or company who has them on deposit, under control or for safekeeping; or
- (c) direct a person or company to maintain funds, securities or property, and to refrain from disposing of, transferring, dissipating or otherwise dealing with or diminishing the value of those funds, securities or property.

Duration

(1.1) A direction under subsection (1) applies until the Commission in writing revokes the direction or consents to release funds, securities or property from the direction, or until the Superior Court of Justice orders otherwise.

Application

(2) A direction under subsection (1) that names a bank or other financial institution shall apply only to the branches of the bank or other financial institution identified in the direction.

Exclusions

(3) A direction under subsection (1) shall not apply to funds, securities or property in a recognized clearing agency or to securities in process of transfer by a transfer agent unless the direction so states.

Certificate of pending litigation

(4) The Commission may order that a direction under subsection (1) be certified to a land registrar or mining recorder and that it be registered or recorded against the lands or claims identified in the direction, and on registration or recording of the certificate it shall have the same effect as a certificate of pending litigation.

Review by court

(5) As soon as practicable, but not later than 10 days after a direction is issued under subsection (1), the Commission shall serve and file a notice of application in the Superior Court of Justice to continue the direction or for such other order as the court considers appropriate.

Grounds for continuance or other order

(5.1) An order may be made under subsection (5) if the court is satisfied that the order would

be reasonable and expedient in the circumstances, having due regard to the public interest and,

- (a) the due administration of Ontario securities law or the securities laws of another jurisdiction; or
- (b) the regulation of capital markets in Ontario or another jurisdiction.

Notice

(6) A direction under subsection (1) may be made without notice but, in that event, copies of the direction shall be sent forthwith by such means as the Commission may determine to all persons and companies named in the direction.

Clarification or revocation

(7) A person or company directly affected by a direction may apply to the Commission for clarification or to have the direction varied or revoked.

Appointment of receiver, etc.

129 (1) The Commission may apply to the Superior Court of Justice for an order appointing a receiver, receiver and manager, trustee or liquidator of all or any part of the property of any person or company.

Grounds

- (2) No order shall be made under subsection (1) unless the court is satisfied that,
 - (a) the appointment of a receiver, receiver and manager, trustee or liquidator of all or any part of the property of the person or company is in the best interests of the creditors of the person or company or of persons or companies any of whose property is in the possession or under the control of the person or company or the security holders of or subscribers to the person or company; or
 - (b) it is appropriate for the due administration of Ontario securities law.

Application without notice

(3) The court may make an order under subsection (1) on an application without notice, but the period of appointment shall not exceed fifteen days.

Motion to continue order

(4) If an order is made without notice under subsection (3), the Commission may make a motion to the court within fifteen days after the date of the order to continue the order or for the issuance of such other order as the court considers appropriate.

Powers of receiver, etc.

(5) A receiver, receiver and manager, trustee or liquidator of the property of a person or company appointed under this section shall be the receiver, receiver and manager, trustee or liquidator of all or any part of the property belonging to the person or company or held by the person or company on behalf of or in trust for any other person or company, and, if so directed by the court, the receiver, receiver and manager, trustee or liquidator has the authority to wind up or manage the business and affairs of the person or company and has all powers necessary or incidental to that authority.

Directors' powers cease

(6) If an order is made appointing a receiver, receiver and manager, trustee or liquidator of the property of a person or company under this section, the powers of the directors of the company that the receiver, receiver and manager, trustee or liquidator is authorized to exercise may not be exercised by the directors until the receiver, receiver and manager, trustee or liquidator is discharged by the court. .

Fees and expenses

(7) The fees charged and expenses incurred by a receiver, receiver and manager, trustee or liquidator appointed under this section in relation to the exercise of powers pursuant to the appointment shall be in the discretion of the court. 194, c. 11, s. 375.

Variation or discharge of order

(8) An order made under this section may be varied or discharged by the court on motion.

Limitation period

129.1 Except where otherwise provided in this Act, no proceeding under this Act shall be commenced later than six years from the date of the occurrence of the last event on which the proceeding is based.

Directors and officers

129.2 For the purposes of this Act, if a company or a person other than an individual has not complied with Ontario securities law, a director or officer of the company or person who authorized, permitted or acquiesced in the non-compliance shall be deemed to also have not complied with Ontario securities law, whether or not any proceeding has been commenced against the company or person under Ontario securities law or any order has been made against the company or person under section 127.

Courts of Justice Act, R.S.O. 1990, c. C.43**137(2) Sealing documents**

A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

ONTARIO SECURITIES COMMISSION

Applicant

and

GO-TO DEVELOPMENTS

HOLDINGS INC. et al

Respondents

Court File No: CV-21-00673521-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at TORONTO

FACTUM OF THE RECEIVER
(RETURNABLE NOVEMBER 23, 2022)

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